IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1286 of 1988

with

FIRST APPEAL No 1287 & 1288 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HASMUKHBHAI AMBALAL PATEL

Versus

SECOND ADDL. SPECIAL LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 1286 & 1288 of 1988
   MR DEVENDRA A PATEL for Petitioner No. 1
   MR NITIN M AMIN for Petitioner No. 1
   MR AD OZA, GP for Respondent No. 1
2. First Appeal No. 1287 of 1988
   MR PV NANAVATI, MR NITIN M AMIN & DA PATEL for Appellant
   MR AD OZA, GP, for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The short question which falls for consideration and adjudication in this group of three appeals, under section 54 of the Land Acquisition Act, 1894 (Act), is whether the appellants are entitled to claim special interest in view of the provisions of section 4, sub-section (3) of the Land Acquisition (Amendment and Validation) Act, 1967, or not ?

Section 4, sub-section 3 of the Land Acquisition (Amendment and Validation) Act, 1967 (for short, Validation Act) reads as under:

"Validation of certain acquisitions.

xxxxx
xxxxx

(3) Where acquisition of any particular land covered by a notification under sub-section (1) of Sec. 4 of the principal Act, published before the commencement of the Land Acquisition (amendment and Validation) Ordinance, 1967, is or has been made in pursuance of any declaration under Sec. 6 of the principal Act, whether made before or after such commencement, and such declaration is or has been made after the expiry of three years from the date of publication of such notification, there shall be paid simple interest, calculated at the rate of six per certain per annum on the market value of such land, as determined under Sec.23 of the principal Act, from the date of expiry of the said period of three years to the date of tender of payment of compensation awarded by the Collector for the acquisition of such land:

Provided that no such interest shall be payable for any period during which the proceedings for the acquisition of any land were held up on account of stay or injunction by order of Court;

Provided further that nothing in this sub-section shall apply to the acquisition of any land where the amount of compensation has been paid to the persons interested before the commencement of this Act."

Our attention is, also, invited to a decision of Division Bench of this Court in First Appeal No.1906/85 and allied matters decided on 11.2.86, wherein, this Court allowed the plea of special interest under sub-section (3) of section 4 of the Validation Act, on the market value of the lands, as determined by the reference Court exclusive of solatium for the period after the expiry of three years from the date of publication of notification under section 4 of the Land Acquisition Act till the deposit or payment thereof.

This decision is also referable to the acquisition of lands by the respondents in 1963 for the purpose of construction of canal in respect of Narmada Project. So is the position in the present group of three appeals. The date of notification, in the present group, under section 4(1) was 31.1.63, whereas, the date of notification under section 6(1) was 9.1.69. The date of possession, which is not in dispute, was 17th March, 1978. In view of the provisions of section 4 sub-section (3) of the Validation Act, and the aforesaid decision of the Division Bench of this Court and also the decision of a Division Bench rendered in the case of Amirbibi v. Special Land Acquisition Officer, 22 GLR 590, the appellants are entitled to claim special interest.

Incidentally, it may be mentioned that the plea raised in the appeals about the grant of benefit under section 23(1-A) of the Land Acquisition Act was not pressed. Therefore, the sole contention which is advanced before us is pertaining to the grant of interest under section 4(3) of the Validation Act, as stated before.

After having considered the factual profile of this group of appeals and the aforesaid two decisions and the provisions of section 4(3), the claimants are entitled to special interest under section 4(3) of the Land Acquisition (Amendment and Validation) Act, 1967 on the market value of the lands as determined by the reference Court exclusive of solatium for the period after the expiry of three years from the date of publication of notification under section 4(1) of the Principal Act, till the date of deposit before the reference court. The respondents are, also, directed to deposit the amount due

and payable by virtue of this judgment within a period of three months from today.

In the result, the appeals stand, partly, allowed as aforesaid with costs.

(J.N.Bhatt, J.)

(Akshay H. Mehta, J.)
(vjn)